



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2004

Ms. Carol Longoria
Public Information Coordinator
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2004-4603

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 202878.

The University of Texas at El Paso (the "university") received a request for three categories of information related to the university police. You state that you have no responsive documents for the first category of information.¹ You claim that some of the requested information is subject to a previous ruling by this office, and that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also considered comments submitted by two interested third parties. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

You inform us that information responsive to the third category of this request is subject to a previous ruling by this office. To the extent that the documents at issue here are precisely the same records that we addressed in Open Records Letter No. 2004-3561 (2004), we conclude that the university may continue to rely on that letter ruling as a previous determination. *See* Open Records Decision No. 673 (2001) (first type of previous determination exists where requested information is precisely same information addressed

¹ The Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W. 2d 266 (Tex. Civ. App. - San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

in prior attorney general ruling, ruling is addressed to same governmental body, ruling concludes that information is or is not excepted from disclosure, and law, facts, and circumstances on which ruling was based have not changed).

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrines of common law and constitutional privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

We agree that certain information within the submitted documents is highly intimate or embarrassing. We note, however, that in this case there is a legitimate public interest in the submitted information, and thus none of the submitted information can be withheld from disclosure under section 552.101 in conjunction with the right to privacy. *See* Open Records Decision Nos. 542 at 5 (1990) (information regarding public employee's qualifications is of

legitimate concern to public), 470 at 4 (1987) (public employee's job performance does not generally constitute private affairs), 423 at 2 (1984) (scope of public employee privacy is narrow), 405 at 2 (1983) (manner in which public employee performed his or her job cannot be said to be of minimal public interest), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom not protected under statutory predecessor to section 552.101).² We further find that the submitted information does not fall within the zones of privacy or implicate an individual's privacy interests for purposes of constitutional privacy. Accordingly, we conclude that the university may not withhold any of the submitted information under section 552.101 and common-law or constitutional privacy.

In summary, to the extent that the documents at issue here are precisely the same records that we addressed in Open Records Letter No. 2004-3561 (2004), we conclude that the university may continue to rely on that letter ruling as a previous determination. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

² Both interested third parties claim that the personal references in the submitted documents are slanderous and defamatory. Additionally, they state that they will suffer undue harm from the release of the unfounded statements regarding the way in which they perform their duties. However, in Open Records Decision No. 579, the attorney general determined that the statutory predecessor to section 552.101 did not incorporate the common law tort of false-light privacy, overruling prior decisions to the contrary. Open Records Decision No. 579 at 3-8 (1990). Thus, the truth or falsity of information is not relevant under the Act. In addition, the Texas Supreme Court has held that false-light privacy is not an actionable tort in Texas. *Cain v. Hearst Corp.*, 878 S.W.2d 577, 579 (Tex. 1994).

records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/seg

Ref: ID# 202878

Enc. Submitted documents

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